

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JOSEPH BUCSKA, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KYRA LOUISE AGANOWSKI,

Respondent-Appellant,

and

DAVID CHARLES BUCSKA,

Respondent.

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In the Matter of JOSEPH BUCSKA, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID CHARLES BUCSKA,

Respondent-Appellant,

and

KYRA LOUISE AGANOWSKI,

Respondent.

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UNPUBLISHED

March 3, 2005

No. 256930

Wayne Circuit Court

Family Division

LC No. 01-403861-NA

No. 256931

Wayne Circuit Court

Family Division

LC No. 01-403861-NA

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

In these consolidated appeals, respondents Kyra Louise Aganowski and David Charles Bucska appeal as of right from the June 4, 2004, order terminating their parental rights to the minor child (d/o/b 3/26/2004), pursuant to MCL 712A.19b(3)(b)(i) (parent's act caused physical

injury or physical or sexual abuse), (g) (failure to provide proper care or custody), (i) (parental rights to one or more siblings have been terminated due to serious or chronic neglect or physical or sexual abuse and prior attempts to rehabilitate have been unsuccessful), and (j) (reasonable likelihood, based on the parent's conduct or capacity, that the child will be harmed if returned to the parent's home). We affirm.

### I. Basic Facts And Procedural History

On October 24, 2001, Aganowski and Bucska had a child (not the child at issue in this case), who tested positive for cocaine and marijuana at birth. During her pregnancy with this child, Aganowski allegedly used crack cocaine at least twice a week. Thereafter, this child and another, Aganowski's older child, were removed from Aganowski and Bucska's home. The trial court then assumed temporary custody of the two children and ordered Aganowski to undergo a psychiatric evaluation and participate in substance abuse treatment, parenting classes, and family counseling, and ordered Bucska to receive in-home services, attend parenting classes and participate in family counseling.

On February 1, 2003, while the two children were in the temporary custody of the trial court, Aganowski and Bucska had another child, who also tested positive for cocaine at birth. This child was then removed from Aganowski and Bucska's care and the trial court assumed temporary jurisdiction over her due to neglect, failure to protect, instability, an unfit home environment, abandonment, domestic violence and substance abuse.

On July 23, 2003, the trial court terminated respondents' parental rights to two of the children under several statutory grounds, including subsection (b)(i) (parent's act caused physical abuse and a reasonable likelihood exists that the child would suffer injury or abuse in the future), (b)(ii) (parent who had the opportunity to prevent he physical injury or abuse failed to do so and a reasonable likelihood exists that the child would suffer injury or abuse in the future), (c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), (j) (likelihood of harm if returned to the parent's home) and (k)(i) (abandonment). Specifically, the trial court found that, despite referrals and services offered to Aganowski, she failed to comply with the case service plan in that she did not provide weekly drug screens (she submitted to four screens out of eighty-seven requested screens and tested positive twice), did not complete substance abuse treatment, did not successfully complete and benefit from counseling or parenting classes, failed to maintain stable housing, employment and regular contact with petitioner and did not regularly attend visits with her children.

Regarding Bucska, the trial court found that he failed to visit, support, make contact with or plan for his children and had a chronic substance abuse history. In addition, the trial court found that Bucska failed to comply with his case service plan in that he did not complete a substance abuse assessment, submitted only three of sixty-seven requested drug screens, did not successfully complete and benefit from individual counseling, did not maintain suitable housing because he continued to reside with Aganowski who posed a risk to the children, did not maintain employment or contact with petitioner, and failed to regularly attend visits with the

children, particularly from January 2003 to May 2003. Aganowski's older daughter remained a temporary court ward.<sup>1</sup>

Sometime thereafter, Aganowski began a substance abuse treatment plan as part of her case service plan regarding the older daughter. On January 30, 2004, Aganowski tested positive for cocaine. On February 2, 2004, Aganowski began individual outpatient substance abuse therapy. In February and early March of 2004, Aganowski submitted six drug screens, all of which were negative. However, on March 24, 2004, Aganowski tested positive for cocaine again.

On March 26, 2004, respondents had the minor child at issue in this case. On March 27, 2004, Doria Rhone, a Children's Protective Services Specialist employed by petitioner, received a referral concerning the minor child. On March 30, 2004, Rhone interviewed respondents at the hospital. During the interview, Aganowski admitted that she used cocaine twice during the pregnancy, in January and March, and indicated that she was currently in a substance abuse treatment program, was providing random drug screens, and had received "some prenatal care but not full time." Aganowski also admitted to a nurse that she used drugs during her pregnancy. Aganowski and Bucska indicated that they had the proper provisions to provide for the minor child, and Aganowski did not want to "make the mistake she did with the [older] children." Aganowski and Bucska also indicated that they were living together and lived together when Aganowski used cocaine. Bucska was unemployed. The same day as the interview, Aganowski tested positive for opiates.

Following the interview, Rhone determined that there was no need to provide further services to Aganowski and Bucska due to their extensive prior protective services history and Aganowski's past and current drug abuse. On April 2, 2004, Rhone filed an original petition requesting the trial court to terminate respondents' parental rights. In support of the petition, Rhone cited (1) Aganowski's and Bucska's extensive history with the trial court and protective services involving child neglect, failure to protect, unfit home environment, abandonment, domestic violence and substance abuse; (2) their past failure to substantially comply with or adequately benefit from the case service plan; (3) that the older children tested positive for cocaine at birth; (4) Aganowski's admission to using cocaine while pregnant with the minor child; (5) the termination of their parental rights to their older children, (6) their failure to rectify the conditions that led to the removal of their older children, (7) their failure to demonstrate an ability to safely and properly care for the minor child, and (8) Bucska's lack of insight into the risk of harm posed by Aganowski and his failure to protect the minor child from harm.

By May 25, 2004, the date of the termination trial, Aganowski was participating in drug therapy and was partially compliant with her substance abuse treatment plan in that she attended five individual counseling sessions. According to Aganowski's therapist, her progress was "good," she was willing to listen and learn about the steps she needed to complete to become drug-free, and she wanted to be drug-free. Aganowski, however, was not consistently submitting

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<sup>1</sup> Petitioner did not seek termination of Aganowski's parental rights to the older daughter, who was thirteen, because the daughter did not want Aganowski's rights terminated.

drug screens. Rhone did not know whether Aganowski could overcome her substance abuse issue in the future and believed it was in the minor child's best interests for the trial court to terminate Aganowski and Bucska's parental rights.

After conducting a termination trial, the trial court found that the minor child, having tested positive for drugs that Aganowski admitted using during pregnancy, came within the provisions of the juvenile code. The trial court then found that (1) respondents had an extensive protective services history, (2) the trial court previously terminated their parental rights to two older children, who also tested positive for cocaine at birth, because of respondents' lack of compliance with the treatment plan and Aganowski's continued use of drugs, (3) there was no evidence that Aganowski had rid herself of her "severe drug problem," and (4) Bucska was living with Aganowski during her pregnancy and continued to plan and reside with her. The trial court further found that termination of respondents' parental rights was not clearly contrary to the best interests of the minor child. On June 4, 2004, the trial court entered an order terminating respondents' parental rights to the minor child under 712A.19b(3)(b)(i), (g), (i) and (j).

## II. Denial Of Motion For Adjournment Or Continuance

### A. Standard Of Review

We review the trial court's decision on a motion for adjournment for abuse of discretion.<sup>2</sup> The burden of proof is on the party asserting an abuse of discretion.<sup>3</sup> In addition, to demonstrate that the trial court abused its discretion in denying a request for an adjournment, the respondent must show prejudice resulting from the trial court's decision.<sup>4</sup>

### B. Good Cause And Prejudice Requirements

Aganowski and Bucska argue that the trial court abused its discretion by denying their motions to adjourn the termination trial. Adjournments in child protective proceedings are granted only for good cause after taking into consideration the best interests of the child.<sup>5</sup> Here, good cause did not exist for an adjournment. The record indicates that respondents were clearly informed of the date and time of the termination hearing and were aware of its significance due to the termination of respondents' parental rights to two older children. Although a parent has the right to be present at the initial dispositional hearing or may appear through legal counsel, "[t]he court may proceed in the absence of parties provided that proper notice has been given."<sup>6</sup> In this case, such notice was given. In addition, respondents' attorneys, having represented them in their prior termination trial, were sufficiently familiar with the current case to adequately

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<sup>2</sup> *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

<sup>3</sup> *Id.* at 28.

<sup>4</sup> *In re Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

<sup>5</sup> MCR 3.923(G)(1) and (2).

<sup>6</sup> MCR 3.973(D)(2) and (3).

represent respondents' interests. Our review of the trial transcripts also indicates that respondents' attorneys understood the issues and appropriately questioned the witnesses.

Moreover, based on respondents' history of failing to appear at previous hearings, including the termination trial regarding their older children, there was no indication that they had a good-faith intention to participate in the termination hearing. Finally, it was not in the child's best interests to further delay the proceeding to provide respondents with an opportunity to demonstrate any last-minute efforts towards rehabilitation. Given the overwhelming evidence supporting termination in this case, even had an adjournment been granted, the outcome of the trial would not have differed.<sup>7</sup> Considering the foregoing, we fail to find that the trial court abused its discretion by denying respondents' motion to adjourn.<sup>8</sup>

### III. Termination Of Parental Rights

#### A. Standard Of Review

We review the trial court's findings of fact, and its determination regarding the child's best interests, for clear error.<sup>9</sup> A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made.<sup>10</sup>

#### B. Legal Standards

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.<sup>11</sup> If the petitioner establishes a statutory ground for termination by clear and convincing evidence, the trial court must order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.<sup>12</sup>

#### C. Establishing A Ground For Termination

Aganowski and Bucska argue that the trial court clearly erred in concluding that a statutory ground for termination had been proved. Our review of the trial court file, which includes the previous termination proceedings, shows otherwise. Following the trial court's assumption of temporary jurisdiction over their older children after the children tested positive for cocaine at birth, it ordered respondents to comply with treatment plans. Because of

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<sup>7</sup> *Snider, supra* at 421.

<sup>8</sup> *Jackson, supra* at 28.

<sup>9</sup> MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

<sup>12</sup> MCL 712A.19b(5); *In re Trejo, supra* at 353.

respondents' failure to make progress on their treatment plans, despite efforts by petitioner to assist them for almost two years, the trial court terminated their parental rights to the older children under MCL 712A.19b(3)(b)(i), (c)(i), (g), (j), and (k)(i). Specifically, the trial court found that Aganowski failed to comply with the case service plan in that she did not provide weekly drug screens (she submitted to four screens out of eighty-seven requested screens and tested positive twice), did not complete substance abuse treatment, did not successfully complete and benefit from counseling or parenting classes, failed to maintain stable housing, employment and regular contact with petitioner, and did not regularly attend the visits with her children.

Regarding Bucska, the trial court found that he failed to visit, support, make contact with or plan for his children, and had a chronic substance abuse history. In addition, the trial court found that Bucska failed to comply with his case service plan in that he did not complete a substance abuse assessment; submitted only three of sixty-seven requested drug screens; did not successfully complete or benefit from counseling; did not maintain suitable housing because he continued to live with Aganowski, who posed a risk to the children; did not maintain employment or contact with petitioner; and failed to regularly attend visits with the children. The trial court's previous findings provide clear and convincing evidence that respondents seriously neglected or abused their older children, and also indicate that Aganowski and Bucska had the opportunity to rehabilitate during the prior proceedings, but were unable to do so.

Moreover, the evidence failed to suggest that respondents successfully addressed the parenting or substance abuse issues leading to the past terminations. Although Aganowski was enrolled in substance abuse counseling at the time of the termination trial in the present case and there was no evidence that Bucska was abusing drugs, evidence indicated that Aganowski continued to abuse drugs after the prior terminations – indeed, she used cocaine while pregnant with the minor child and while participating in substance abuse therapy. Despite this drug use, Bucska continued to live with Aganowski. Further, Bucska was unemployed. Accordingly, given the prior unsuccessful attempts to become fit parents and/or overcome the substance abuse problem, we find no clear error in the trial court's determination that clear and convincing evidence supported termination under MCL 712A.19b(3)(i).

We note that clear and convincing evidence also supports termination on most of the remaining statutory grounds identified by the trial court;<sup>13</sup> however, because only one statutory ground is required to affirm the termination order, we need not address the alternative grounds.<sup>14</sup>

#### D. The Child's Best Interests

Aganowski and Bucska also argue that the trial court erred because termination of their parental rights was clearly not in the minor child's best interests. Our review revealed no evidence that termination would not be the best interests of the minor child. Instead, the evidence showed that Aganowski has a long history of serious substance abuse and has been

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<sup>13</sup> Petitioner concedes on appeal that the trial court erred in terminating Bucska's parental rights to the child under MCL 712A.19b(3)(b)(i).

<sup>14</sup> *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

unable to successfully rehabilitate; that their parental rights were previously terminated to their two older children, who also tested positive for cocaine at birth; and that, despite involvement by the trial court and petitioner for over two years, Aganowski and Bucska remained unable to make the necessary changes to regain custody of their older children. Given the foregoing, the trial court did not clearly err in terminating their parental rights instead of delaying permanency for the minor child.<sup>15</sup>

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen

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<sup>15</sup> *In re Trejo, supra* at 364.